IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977
No. 77-1202

STATE OF MICHIGAN,

Petitioner,

v.

HAROLD W. DORAN

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF MICHIGAN

BRIEF FOR THE PETITIONER

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OPINIONS BELOW

The opinion of the Michigan Supreme Court *In the Matter of Doran* (App. 99a) is reported at 401 Mich 235; NW2d 406 (1977). The order of the Michigan Supreme Court denying rehearing (App. 131a) is reported at 402 Mich 951 (1977).

JURISDICTION

The judgment of the Michigan Supreme Court was entered on October 4, 1977. *In the Matter of Doran*, 401 Mich 235; 258 NW2d 406 (1977). The People's motion for rehearing was denied by the Michigan Supreme Court on November 29, 1977. *People* v *Harold W. Doran*, 402 Mich 951 (1977).

This Court's jurisdiction is invoked pursuant to 62 Stat 929 (1948), 28 USC 1257(3).

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"• • •

"• • •

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

The Attorney General of the State of Michigan filed a petition for writ of certiorari which was docketed in this court on February 27, 1978. On April 17, 1978, the Petition for writ of certiorari was granted.

QUESTION PRESENTED

Did the Michigan Supreme Court misconstrue the Fourth Amendment and the extradition clause of the United States Constitution when it held that a fugitive may challenge in a collateral proceeding in the courts of the asylum state a demanding state's extradition documents on the basis that they fail to show probable cause under the Fourth Amendment?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment IV. The right of the People to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Article IV, § 2. The citizens of each state shall be entitled to all Privileges and Immunities of Citizens in the several States. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime. . . .

62 Stat 822 (1948), 18 USC § 3182:

"Fugitives from State or Territory to State, District or Territory

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause

him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged."

For the convenience of the Court, the Arizona and Michigan extradition statutes are appended hereto as Exhibit A.

STATEMENT OF THE CASE

On December 18, 1975, Harold W. Doran was arrested in Bay City, Michigan, and charged with receiving and concealing stolen property under the laws of the State of Michigan. MCLA 750.535; MSA 28.803. The charge arose out of Doran's possession of a truck which he had driven to Michigan from Arizona.

The Bay City Police Department immediately notified local authorities in Maricopa County (Phoenix), Arizona. On January 7, 1976, Arizona authorities issued a warrant for Doran's arrest charging him with the theft of a motor vehicle or in the alternative, theft by embezzlement pursuant to Arizona law. A.R.S. (App. 26a).

On January 12, 1976, Doran was arraigned in Michigan as a fugitive (App. 16a). The Michigan criminal charge, receiving and concealing stolen property, was eventually dismissed. (App. 23a). However, the time of Doran's confinement as a fugitive was extended by a Bay County Magistrate to allow additional time for his arrest to be made under a warrant of the governor of Michigan upon a requisition of Arizona's governor.

On February 11, 1976, the governor of Arizona issued a

requisition for extradition. The requisition was accompanied by the original complaint and warrant plus two supporting affidavits. (App. 34a).

On March 12, 1976, the Michigan governor's warrant was issued. (App. 44a). Doran was arraigned thereon on March 29, 1976.

Doran twice petitioned the arraigning court for a writ of habeas corpus attacking the validity of the governor's warrant on the ground that it was not issued in conformity with the Uniform Criminal Extradition Act, MCLA 780.1-780.31; MSA 28.1285(1)-28.1285(31); A.R.S. 13-1301—13-1328. The court denied both writs (App. 1a).

The Michigan Court of Appeals denied Doran's application for leave to appeal the denial of his first habeas corpus petition and also denied his original habeas corpus petition filed in the Court of Appeals. *People* v *Harold W. Doran*, Michigan Court of Appeals No. 28507 and 30516. (App. 68a). The Michigan Supreme Court granted leave to appeal the first habeas corpus petition on November 1, 1976. *People* v *Harold W. Doran*, 397 Mich 886. On October 4, 1977, the Michigan Supreme Court reversed the trial court's order and ordered the release of Doran forthwith. At that time Doran had been incarcerated without bond pending extradition since December 18, 1975. *In the Matter of Doran*, 401 Mich 235; 258 NW2d 406 (1977). On October 24, 1977, the People of the State of Michigan filed an application for rehearing, and on November 29, 1977, the Michigan Supreme Court denied the application. 402 Mich 951 (1977).

The Attorney General of the State of Michigan filed a petition for writ of certiorari which was docketed in this court on February 27, 1978. On April 17, 1978, the Petition for writ of certiorari was granted.

SUMMARY OF ARGUMENT

The Michigan Supreme Court determined that an asylum state could require official confirmation of probable cause in the extradition documents submitted by a demanding state requesting the rendition of an alleged fugitive. The Michigan Supreme Court accepted the reasoning of *Kirkland* v *Preston*, 128 US App DC 148; 385 F2d 670 (1967), which was quoted at length. *Kirkland* construed 23 D.C. Code § 401(a) and held that a Governor's requisition must be supported by a showing of probable cause and that absent a grand jury indictment or a judicial determination of probable cause, the affidavit accompanying the Governor's requisition must contain facts adequate to sustain a finding of probable cause for issuance of an arrest or search warrant pursuant to Fourth Amendment decisions of this Court. The *Kirkland* and *Doran* opinions focus upon the rights of the accused fugitive rather than the right of a demanding state to demand the production of an individual accused of violating its laws.

The Arizona Rules of Criminal Procedure provide in specific detail the preliminary proceedings required to charge a party with a crime. A.R.S. Rule 2.4 provides that a magistrate before whom a complaint is filed shall subpoena for examination additional witnesses as may be required and that he shall proceed to issue a warrant if he determines there is reasonable cause to believe an offense has been committed. The Arizona Supreme Court has discussed the purpose of the investigation by the magistrate and has indicated that it is to protect the accused from frivolous and malicious charges and that from this the magistrate will subsequently be able to determine whether probable cause exists to support a warrant. *Arizona* v *Lynch*, 107 Arizona 463; 480 P2d 697 (1971); *Erdman* v *Superior Court*, 102 Arizona 524; 433 P2d 972 (1967); *State* v *Currier*, 86 Arizona 394; 347 P2d 29 (1959). The Arizona Rules of Criminal Procedure provide that upon a finding of probable

cause the magistrate shall immediately issue a warrant and the rules specifically state the information that must be contained in the warrant. A.R.S. Rules 3.1 and 3.2. A review of the record in this case will indicate that a justice of the peace in Arizona did issue a warrant which stated that she found "reasonable cause to believe that such offense(s) were committed and that the accused committed them."

Gerstein v *Pugh*, 420 US 103; 95 S Ct 854; 43 L Ed 2d 54 (1975), held that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest. However, *Gerstein* did not involve extradition and did not purport to either review or overrule the body of case law relative to extradition. *Gerstein* considered the issue of whether a person arrested and held for trial on an information is entitled to a judicial determination of probable cause for detention. This Court indicated that an adversary proceeding is not necessary and that the standard is probable cause to believe the suspect has committed a crime which has traditionally been decided by a magistrate in a nonadversary proceeding using hearsay and written testimony. The *Gerstein* decision was limited to the precise requirements of the Fourth Amendment and recognized the desirability of flexibility and experimentation and the differences in each state's pretrial criminal procedure.

Interstate extradition is a matter of federal law which originates in Article IV, § 2 of the United States Constitution and is effectuated by the current implementing statute, 62 Stat 822 (1948), 18 USC § 3182. Both Michigan and Arizona have uniform extradition acts, MCLA 780.1-780.31; MSA 28.1285(1)-28.1285(31); A.R.S. 13-1301—13-1328, but those statutes do not articulate specific standards for the content of an affidavit which must be forwarded by the demanding state to the asylum state requesting the rendition of an alleged fugitive. Although the states have power to enact these supplementary statutes,

it is clear that in the realm of interstate extradition the Constitution and its implementing federal statutes are supreme.

The Extradition Clause is intended to surmount the barrier of state boundaries in order that the States may bring offenders to speedy trial. It is not intended as a preliminary inquiry into the merits of the criminal prosecution and is merely a summary executive proceeding whereby a criminal may be brought before the appropriate demanding tribunal for trial. *Biddinger* v *Commissioner of Police of the City of New York*, 245 US 128; 38 S Ct 41; 62 L Ed 193 (1917). The object of the rendition clause is to insure that states do not become asylums for fugitives and the clause effectively eliminates state boundaries in order to bring offenders to speedy trial. Extradition is more than a matter of comity; it is the command of the supreme law of the land that a person must be delivered up if he is a fugitive. *Appleyard* v *Massachusetts*, 203 US 222; 27 S Ct 122; 51 L Ed 161 (1906). *Roberts* v *Reilly*, 116 US 80; 6 S Ct 291; 29 L Ed 544 (1885).

An asylum state court in a collateral proceeding should not consider federal, constitutional or other related claims raised by an alleged fugitive. In *Pearce* v *Texas*, 155 US 311; 15 S Ct 116; 39 L Ed 164 (1864), Pearce argued that Alabama indictments were insufficient to authorize his extradition in that they did not indicate that the offenses were committed in the demanding state and that they did not contain the time or place where the alleged offenses occurred. The indictments were found to be in substantial conformity with the Alabama statutes and their sufficiency as a matter of technical pleading was not allowed to be questioned. In *Sweeney* v *Woodall*, 344 US 86; 73 S Ct 139; 97 L Ed 114 (1952), the attempt of a fugitive fom Alabama to challenge his confinement was rejected. He had asserted that his past confinement in an Alabama prison had amounted to cruel and unusual punishment and that any future confinement would similarly violate the rights secured to him by the Constitution. Citing *Dye* v *Johnson*, 338 US 864; 70 S Ct 146; 94 L Ed 530 (1949), and *Ex parte Hawk*, 321 US 114; 64 S Ct 448; 88 L Ed 572 (1944), this Court denied relief to Woodall because he had made no showing that relief was not available to him in the courts of Alabama. It is not to be presumed that the courts of the demanding state will not protect the constitutional rights of the accused. *Biddinger* v *Commissioner of Police*, 245 US 128; 38 S Ct 41; 62 L Ed 193 (1917).

In *Pierce* v *Creecy*, 210 US 387; 28 S Ct 714; 52 L Ed 1113 (1908), a fugitive alleged that a Texas indictment returned against him did not adequately charge him with a crime. In rejecting his argument it was indicated that the only safe rule is to abandon entirely the standard to which the indictment must conform and consider only whether it shows satisfactorily that the fugitive has been charged, however inartificially, with crime in the state from which he fled. It is clear that the Constitution neither requires nor permits review of a sister state's indictment in a habeas corpus proceeding.

In *In the Matter of Strauss*, 197 US 324; 25 S Ct 535; 49 L Ed 774 (1905), the petitioner was charged by affidavit. Strauss contended that the statute allowing delivery of the fugitive based upon an affidavit made before a justice of the peace violated the Fourth Amendment. Relief was denied and "a party is charged with crime when an affidavit is filed, alleging the commission of the offense and a warrant is issued for his arrest, and this is true whether a final trial may or may not be had upon such charge." 197 US 330. In *Strauss* the argument was also made and rejected that people may be wrongly extradited. The Court noted that extradition is simply one step in securing the arrest and detention of the defendant and that the extradition proceedings are not fully completed until the party is brought to the court in which trial may be had.

In *Compton* v *State of Alabama*, 214 US 1; 29 S Ct 605; 53 L

Ed 885 (1909), the court indicated that a Georgia notary public could be deemed a magistrate for purposes of a statute which required that a factual affidavit must be sworn to before a magistate of the state charging the fugitive. When the executive authority of the respective states, the one in making a requisition and the other in issuing a warrant for the arrest of the alleged fugitive, considers an affidavit as a sufficient basis in law for their acting the judiciary should not interfere on habeas corpus and discharge the accused unless it appears what was done was in plain contravention of law.

Several decisions of lower federal and state courts have held that the asylum state consistent with the extradition clause may not look behind the demanding state's documents and may not consider federal constitutional claims raised by the fugitive. Unlike the Michigan decision these courts have consistently stated that extradition is a summary proceeding which is but one step in securing arrest and detention. A court in an asylum state conducts a very limited inquiry on applications for habeas corpus to decide whether a crime has been charged in the demanding state, whether the fugitive in custody is the person charged, and whether the fugitive was in the demanding state at the time the alleged crime was committed. In refusing to require a prerendition probable cause determination, these States have acknowledged that the Extradition Clause is in the nature of a treaty stipulation and is designed to enable states to aid one another. The focus of the inquiry by the asylum state is upon the fugitive status of the accused, and this inquiry will adequately protect the accused because the asylum state will be able to require proof that the accused is a fugitive from the demanding state and that he is charged with a crime pursuant to *In the Matter of Strauss*, 197 US 324; 25 S Ct 535; 49 L Ed 774 (1905). Leaving the probable cause inquiry to the courts of the demanding state places the determination in the forum best suited to determine the merits of the matter. Adoption of the *Doran* rationale would frustrate the purposes of the

Extradition Clause by engendering protracted litigation, and inevitably fugitives would attempt to raise other constitutional challenges which heretofore were not proper subjects for consideration by the courts of an asylum state.

ARGUMENT

I.

THE OPINION OF THE MICHIGAN COURT IS BASED PRIMARILY ON KIRKLAND v PRESTON AND THE RIGHTS OF A DEFENDANT, WHILE IGNORING THE LAWS OF A DEMANDING STATE REGARDING THE ISSUANCE OF ARREST WARRANTS.

Harold W. Doran argued in the Michigan Supreme Court that he could not be extradited to Arizona because that state's warrant and affidavit supporting the requisition for the Michigan governor's warrant did not reflect an adequate showing of probable cause. The Michigan Supreme Court agreed and ordered Doran released from custody. The opinion of the Michigan Supreme Court was based on *Kirkland* v *Preston*, 128 US App DC 148; 385 F2d 670 (1967), which was quoted at length. In *Kirkland* the United States Court of Appeals for the District of Columbia, construing 23 D.C. Code § 401(a), held that a governor's requisition must be supported by a showing of probable cause and that absent a grand jury indictment or a judicial determination of probable cause, the affidavit accompanying the governor's requisition must contain facts adequate to sustain a finding of probable cause for issuance of an arrest or search warrant pursuant to Fourth Amendment decisions of this Court.

The Michigan Supreme Court found in *Doran* that there was no indictment or document reflecting a prior judicial deter-

mination of probable cause. 407 Mich 240-241. The Michigan Court specifically found that the Arizona complaint and arrest warrent were phrased in conclusory language mirroring the pertinent state statutes and that the two documents did not set out facts which would justify a Fourth Amendment finding of probable cause. The court found that the complaining police officer's initial affidavit was factually void and found that its earlier holding in *Williams* v *Wayne County Sheriff*, 393 Mich 204; 235 NW2d 552 (1975), did not decide the instant question. In *Williams* an equally divided court affirmed the denial of a petition for writ of habeas corpus sought by a Michigan resident resisting extradition. Three members of the Michigan Supreme Court indicated that the court would not look behind the face of an indictment. Three other members of the Court quoted and relied upon *Kirkland* v *Preston* and would have allowed Williams to introduce proof tending to support his contention that the indictment was a forgery.

As in *Kirkland* v *Preston* the Michigan Supreme Court distinguished in *Doran* between an indictment and an affidavit and indicated that its holding would not extend to an indictment.

The court cited Michigan law which provides that an arrest warrant shall issue "[i]f it appears from such examination" that an offense has in fact been committed. However, the court indicated that the Michigan practice has not been to conduct an examination to establish probable cause, citing *People* v *Burrill*, 391 Mich 124, 129; 214 NW2d 823 (1974), and MCLA 766.3; MSA 28.921. The opinion also indicates that in Michigan an accused is entitled to a prompt preliminary examination.

The Michigan Supreme Court then stated that it is "not clear whether there was an independent judicial determination of probable cause made by the Arizona magistrate before issuance of the governor's rendition." 401 Mich 249. The court

relied upon the asserted Michigan practice of issuing arrest warrants without requiring a showing of probable cause and based on that reliance determined that there is "no reason to assume that the Arizona affidavit was made upon a showing, not of record, of probable cause."

The Michigan Supreme Court indicated that it does believe that " '[t]he guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition' MCLA 780.19; MSA 28.1283(19)", but has determined "that Michigan may not arrest, detain and render to the demanding state a person accused of a crime unless that state submits an indictment or a judicial determination of probable cause or adequate, factual affidavit(s) reflecting probable cause." Because Harold Doran had been in custody since December 18, 1975, the court believed it appropriate that he be released forthwith. Unlike *Kirkland* v *Preston*, the demanding state, Arizona, was not provided with notice of the court's intended action and was not given the opportunity to supply additional information prior to Doran's release.

II.

THE ARIZONA RULES OF CRIMINAL PROCEDURE PROVIDE THAT A MAGISTRATE MAY CONSIDER INFORMATION IN ADDITION TO THAT FOUND IN THE COMPLAINT AND SUPPORTING AFFIDAVITS IN DETERMINING WHETHER THERE IS REASONABLE CAUSE TO ISSUE AN ARREST WARRANT.

Criminal proceedings in Arizona are governed by the Arizona Rules of Criminal Procedure. The current rules were promulgated April 17, 1973, and became effective September 1, 1973. The rules set forth in detail the preliminary proceedings

required to charge a party with a crime. A.R.S. Rule 2.2 governs the commencement of felony actions and provides as follows:

> "Felony actions may be commenced:
>
> "a. By indictment, which may or may not be preceded by a complaint; or
>
> b. By the filing of a complaint before a magistrate in a non-record court, or in a court of record with permission of the judge of such court."

The rules indicate that a complaint is a written statement of the essential facts constituting a public offense, made upon oath before a magistrate. A.R.S. Rule 2.3.

Upon the filing of a complaint, it is the duty of the magistrate to determine whether there is reasonable cause to believe an offense has been committed. A.R.S. Rule 2.4 provides:

> "The magistrate before whom a complaint is filed shall subpoena for examination such witnesses as he deems necessary, and such additional witnesses as may be requested by the prosecutor. If he determines from the complaint, any affidavits filed, and any testimony taken, that there is reasonable cause to believe an offense has been committed and the defendant committed it, he shall proceed under Rule 33.1; if not, he shall dismiss the complaint."

In *Arizona* v *Lynch*, 107 Ariz 463; 480 P2d 697 (1971), the Supreme Court of Arizona discussed the functions of the magistrate when a complaint is filed by a third party who does not have personal knowledge of the crime.

Lynch contended that his preliminary hearing was in violation of the Arizona and federal Constitution because the Justice of the Peace had interviewed the victims of the crime.

> "On this point also, we find no error to have been committed. The complaint in this case was filed by a third party adult with no personal knowledge of the crime. In State v. Currier, 86 Ariz. 394, 347 P.2d 29 (1959) we held such complaints to be proper. But when a complaint is made upon information and belief, there arises a duty upon the magistrate or Justice of the Peace to make further inquiry into the source of the complainant's information and the grounds of his belief. The purpose of this investigation is to protect the accused from frivolous and malicious charges. The magistrate should not accept the complainant's mere conclusion. From this the magistrate will subsequently be able to determine in his own mind whether probable cause exists to support a warrant. State v. Currier, supra; Erdman v. Superior Court of Maricopa County, 102 Ariz. 524, 433 P.2d 972 (1967). Thus it is proper and, in fact, to the accused's benefit that such a preliminary investigation be held to determine the basis, if any, of a complaint issued on information and belief." 107 Ariz 464.

See also *Erdman* v *Superior Court*, 102 Ariz 524; 433 P2d 972 1967.

The Arizona Supreme Court has opined that the Arizona Rules of Criminal Procedure satisfy the right of an accused person to be free from arrest save upon a showing of probable cause. *State* v *Currier*, 86 Ariz 394, 400; 347 P2d 29 (1959).

The sufficiency of a complaint is to be determined by the law applicable where the complaint is laid and unless an indictment or affidavit is clearly void, its validity will be left to the courts of the demanding state. *Ex parte Rubens*, 73 Ariz 101, 107, 108; 238 P2d 402 (1951), *cert den* 344 US 840; 73 S Ct 50; 97 L Ed 653 (1952).

A.R.S. Rule 3.1 of the Arizona Rules of Criminal Procedure

provides that upon a finding of probable cause pursuant to A.R.S. Rule 2.4, the magistrate shall immediately issue a warrant or a summons. The warrant must be signed by the issuing magistrate and contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. The warrant must state the offense with which the defendant is charged and command that the defendant be arrested and brought before the issuing magistrate or, if he is absent or unable to act, the nearest or most accessible magistrate in the same county. A.R.S. Rule 3.2.

It is clear from a review of the record (App. 26a) that an Arizona justice of the peace did issue a warrant for Harold Doran's arrest charging him with theft of a motor vehicle or in the alternative, theft by embezzlement. The arrest warrant clearly states that the magistrate found "reasonable cause to believe that such offense(s) were committed and that the accused committed them." (App. 26a) A review of the warrant indicates that it fully complies with Arizona Rule of Criminal Procedure 3.2 which governs the contents of an arrest warrant.

Harold Doran contends that the Arizona arrest warrant is mere "boiler plate" and indicates that the warrant merely repeats the contents of the relevant Arizona statutes which he is charged with violating. However, it is clear that the magistrate has signed a warrant stating she found reasonable cause and that the warrant complies with the relevant Arizona Rules of Criminal Procedure. If Doran wishes to challenge the wisdom or constitutionality of Arizona's criminal procedures, he has access to the state and federal courts in Arizona which are fully competent to entertain any challenge he wishes to raise and which will adequately protect his Constitutional rights. *Biddinger* v *Commissioner of Police*, 245 US 128; 38 S Ct 41; 62 L Ed 193 (1917).

Harold Doran has never been asked to prove that the magi-

strate did not consider other information at the time she issued the warrant. Although the burden is on the Petitioner when he seeks a writ of habeas corpus to clearly demonstrate that the demanding state has violated the Constitution or the relevant statutes, Harold Doran has never done so. The record does not demonstrate that the Arizona magistrate did not follow the relevant Arizona law. The Michigan Supreme Court assumed that because Michigan often allegedly does not follow the relevant Michigan laws that the Arizona magistrate did not follow the relevant Arizona law. Arizona was not notified of the hearings in the Michigan courts and was not given the opportunity to present any evidence at a habeas corpus hearing to support its determination of probable cause. (People's Brief on appeal to the Michigan Supreme Court - page 7).

III.

KIRKLAND v PRESTON HOLDS THAT UNDER THE FOURTH AMENDMENT THE POTENTIAL HARDSHIP ON THE ACCUSED FUGITIVE MANDATES A FINDING OF PROBABLE CAUSE FOR ARREST BY THE ASYLUM STATE.

The Michigan Supreme Court quotes at length and relies upon *Kirkland* v *Preston*, 128 US App DC 148; 385 F2d 670 (1967), which involved the attempted extradition of Oliver Lee Kirkland and Elizabeth Marie Smith from the District of Columbia to Florida. The chief judge of the District Court acting in the role of chief executive for the District of Columbia issued warrants for the arrest of Kirkland and Smith with the view toward their extradition to the state of Florida. The chief judge had before him papers submitted by the governor of Florida which consisted of a Miami, Florida, police officer's affidavit sworn to before a justice of the peace; an arrest warrant issued by the same justice of the peace; and a requisition form executed by the governor certifying the au-

thenticity of the accompanying documents and formally demanding appellants arrest and delivery to Florida officials. The chief judge in the extradition hearing which followed the arrest of Kirkland and Smith had ruled that he would not consider the matter of probable cause and concluded that the appellants had been "substantially charged" and ordered them bound over for extradition. Kirkland and Smith pursued their habeas corpus remedy in the District Court which ruled that the affidavit was sufficient and discharged the writ. An appeal to the Court of Appeals for the District of Columbia Circuit ensued.

The Florida affidavit provided that Kirkland and Smith did "unlawfully, willfully, maliciously and feloniously set fire to and burn, or cause to be burned, a certain building to wit; the Hut Bar, located at 2280 S.W. 32nd Avenue, City of Miami, Dade County, Florida, a further and more particular description of said bar being to the affiant unknown, said bar being the property of one Fredrich Ritter:" 385 F2d 672. The Circuit Court stated that the language in the affidavit mirrored the text of the Florida second degree arson statute, FSA § 806.02, and found that the affidavits were framed in conclusory statutory language, lacked any identification of sources, and did not show probable cause under the Fourth Amendment.

The holding in *Kirkland* is based upon an analysis of several cases which led the court to conclude that the Fourth Amendment standard of probable cause is a minimal and uniform requirement of a valid arrest by state officers.[1]

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[1]
Wolf v *People of State of Colorado*, 338 US 25; 69 S Ct 1359; 93 L Ed 1782 (1949); *Mapp* v *State of Ohio*, 367 US 643; 81 S Ct 1684; 6 L Ed 2d 1081 (1961); *Beck* v *State of Ohio*, 379 US 89; 85 S Ct 223; 13 L Ed 2d 142 (1964); *Ker* v *State of California*, 374 US 23; 83 S Ct 1623; 10 L Ed 2d 726 (1963).

The *Kirkland* court considered *In the Matter of Strauss*, 197 US 324; 25 S Ct 535; 49 L Ed 774 (1905), but said inasmuch as it was decided prior to *Wolf* v *People of the State of Colorado*, 338 US 25; 69 S Ct 1359; 93 L Ed 1782 (1949), there was no reason why the Fourth Amendment which governs criminal arrests should not govern extradition arrests. The *Kirkland* court opined that an extradition demand accompanied by an indictment embodies a grand jury's judgment that probable cause exists, but that the court would subject to closer scrutiny extradition papers relying on an affidavit, even where that affidavit is supported by a warrant of arrest.

The key to the *Kirkland* holding was the court's concern regarding the hardship attendant upon an individual who is extradited. The suspension of the individual's liberty and his travel from one state to another jurisdiction which may be far distant are factors which led the *Kirkland* court to state that the accused should be surrounded with "considerable procedural protection to stave off wrongful rendition." 385 F2d 676. Based on that concern for treatment of the accused, the court found it appropriate to require an official confirmation of probable cause in the asylum state in view of the fact that the accused would have no opportunity for an evidentiary preliminary hearing until he finally arrived in the demanding jurisdiction. 385 F2d 676.

It is clear that the *Kirkland* court focused upon the rights of the accused and not upon the rights of the demanding state. The balance drawn by *Kirkland* is hardship to the fugitive in contrast with asserted inconvenience to the sister state which has averred that her laws have been violated. *Kirkland* really holds that a fugitive is entitled to two probable cause determinations—one by the demanding state and official confirmation of probable cause in the asylum state after the asylum state's governor has issued his warrant of rendition.

IV.

GERSTEIN v PUGH, 420 US 103; 95 S Ct 854; 43 L Ed 2d 54 (1975), WHICH REQUIRES THAT A LENGTHY RESTRAINT OF LIBERTY BE ACCOMPANIED BY A PROBABLE CAUSE DETERMINATION, WAS NOT AN EXTRADITION CASE, AND HAS NO IMPACT UPON THIS COURT'S DECISIONS REGARDING EXTRADITION.

Gerstein v *Pugh*, 420 US 103; 95 S Ct 854; 43 L Ed 2d 54 (1975), held that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest. However, it should be noted that *Gerstein* did not involve extradition and did not purport to either review or overrule the body of cause law relative to extradition. Pugh and Henderson were charged with several offenses by a prosecutor's information, and the record did not indicate whether there was an arrest warrant issued for either individual. 420 US 105. Therefore, the issue framed in *Gerstein* was "whether a person arrested and held for trial on an information is entitled to a judicial determination of probable cause for detention." 420 US 111. While indicating that the maximum protection of individual rights could be assured by always requiring a magistrate's review before an arrest, this Court stated that:

> ". . . [S]uch a requirement would constitute an intolerable handicap for legitimate law enforcement. Thus, while the Court has expressed a preference for the use of arrest warrants when feasible . . ., it has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant." 420 US 113

The opinion goes on to state that "once the suspect is in custody, however, the reasons that justify dispensing with the magistrate's neutral judgment evaporate." 420 US 114. The

foregoing would pertain if there had never been a determination of probable cause and the person had been arrested merely on the strength of an information without the issuance of an arrest warrant.

Under the Florida procedure challenged in *Gerstein* a person could be arrested without a warrant, charged by information, and jailed for a lengthy pretrial detention without any opportunity for a probable cause determination.

In indicating that an adversary proceeding is not necessary in a probable cause determination this court stated:

> "The sole issue is whether there is probable cause for detaining the arrested person pending further proceedings. This issue can be determined reliably without an adversary hearing. The standard is the same as that for arrest. That standard—probable cause to believe the suspect has committed a crime—traditionally has been decided by a magistrate in a non-adversary proceeding on hearsay and written testimony, and the Court has approved these informal modes of proof." 420 US 120.

Thus, while requiring a determination of probable cause and concluding that an adversary determination was necessary, it was recognized that state systems of criminal procedure vary widely, that there is no single preferred pretrial procedure, and that the nature of the probable cause determination usually will be shaped to accord with a state's pretrial procedure viewed as a whole. The *Gerstein* holding was limited to the precise requirements of the Fourth Amendment and recognized the desirability of flexibility and experimentation by the States.

> "It may be found desirable, for example, to make the probable cause determination at the suspect's first appearance before a judicial officer, see *McNabb v United States*,

318 US 332, 342-344, 87 L Ed 819, 63 S Ct 608 (1943), or the determination may be incorporated into the procedure for setting bail or fixing other conditions of pretrial release." 420 US 123-124.

This court's statements in *Gerstein* v *Pugh* regarding the right of each State to articulate its own pretrial criminal procedures is consistent with *Morrissey* v *Brewer*, 408 US 471; 92 S Ct 2573; 33 L Ed 2d 484 (1972), which indicates that each State has the responsibility to write its own code of procedure or pass its own legislation concerning parole revocation and the procedures which must be undertaken to protect the due process rights of the individual parolee.

The Court of Appeals for the First Circuit has considered *Gerstein* and rejected the case as authority for the proposition that there must be a probable cause determination by the asylum state.

> "Respondents seem to assume that if a judicial determination of probable cause must precede extradition, it must be provided by the courts of the asylum state, where the fugitive is held. This is not so. *Gerstein* explicitly rejected the need for adversarial procedures; it required only the neutral and detached judgment of a judicial officer or tribunal, and contemplated that this could be provided before as well as shortly after arrest. Thus nothing in *Gerstein* prevents the demanding state from providing the requisite pre-rendition determination of probable cause." *Ierardi* v *Gunter*, 528 F2d 929, 930-931 (CA 1, 1976)

Clearly the Fourth Amendment probable cause requirement may be read in harmony with the Constitution's extradition clause and with the federal statute. This harmony may be achieved by allowing the demanding state to make its own

probable cause determination and thus obviate any need or reason for a probable cause finding in the asylum state. There is also no reason for the asylum state to review the adequacy of the probable cause finding in the demanding state. Instead the asylum state should be permitted to rely on the presumption of regularity of the demanding state's probable cause determination. *Biddinger* v *Commissioner*, 245 US 128; 38 S Ct 41; 62 L Ed 193 (1917); *Pearce* v *Texas*, 155 US 311; 15 S Ct 116; 39 L Ed 164 (1894).

V.

INTERSTATE EXTRADITION IS A MATTER OF FEDERAL LAW WHICH HAS AS ITS BASIS ARTICLE IV, § 2 OF THE CONSTITUTION AS IMPLEMENTED BY 62 STAT 822 (1948), 18 USC § 3182.

Interstate extradition is a matter of federal law which originates in Article IV, § 2 of the United States Constitution:

> "A person charged in any state with Treason, Felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime. . . ."

This provision of the Constitution has been effectuated by Congress, the current implementing statute being, 62 Stat 822 (1948), 18 USC § 3182.

> "Whenever the executive authority of State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate

> of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of arrest, the prisoner may be discharged."

However, the act does not define the term "charging the person demanded" and does not indicate what material is required to be contained within the affidavit.

The Michigan and Arizona Uniform Criminal Extradition Acts contain sections relative to the form of demand which will be honored. MCLA 780.1—780.31; MSA 28.1283(1)-28.1283 (31); A.R.S. 13-1301—13-1328. The Michigan statute provides that no demand will be honored unless it is in writing accompained by a governor's requisition under the seal of the state; the prosecutor's application for requisition; a verification by affidavits of the application which must be accompanied by certified copies of the indictment returned or information and affidavit filed or of the complaint made to the judge or magistrate and the warrant issued thereon or the judgment of conviction or of sentence imposed; and an executive warrant under the seal of the state authorizing the agent therein named to receive the person demanded. The Michigan statute further provides that the indictment, information, or affidavit made before the magistrate must substantially charge the person with having committed a crime under the law of that state and the indictment, information, affidavit, judgment, conviction, or sentence must be authenticated by the executive authority. MCLA 780.3; MSA 28.1283(3).

The Arizona statute also does not articulate specific standards for the contents of the affidavit and also contains the substantially charged language of the Michigan statute. A.R.S. 13-1303 provides:

> "A. No demand for the extradition of the person charged with crime in another state shall be recognized by the governor unless in writing and accompanied by a copy of an indictment found or by an information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there.
>
> "B. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth."

Although the states have the power to enact these supplemental statutes, it is clear that in the realm of interstate extradition Article IV, § 2 of the United States Constitution and 62 Stat 88 (1948), 18 USC § 3182, are supreme and override contrary state statutes. *Norton* v *State*, 93 Idaho 648; 470 P2d 413 (1970), *cert den* 401 US 936; 91 S Ct 918; 28 L Ed 2d 215 (1971); *In re Hunt*, 276 F Supp 1122 (E.D. Mich, 1967), vacated and writ discharged, 408 F2d 1086 (CA 6, 1969), *cert den* 396 US 845; 90 S Ct 81; 24 L Ed 2d 95 (1969); *Smith* v *State of Idaho*, 373 F2d 149 (CA 9, 1967), *cert den* 388 US 919; 87 S Ct 2139; 18 L Ed 2d 1364 (1967).

VI.

THE EXTRADITION CLAUSE IS INTENDED TO SURMOUNT THE BARRIER OF STATE BOUNDARIES IN

ORDER THAT A STATE MAY BRING OFFENDERS TO SPEEDY TRIAL AND SHOULD BE LIBERALLY CONSTRUED.

In *Biddinger* v *Commissioner of Police of the City of New York*, 245 US 128; 38 S Ct 41; 62 L Ed 193 (1917), this Court was presented with the question of whether the District Court erred in excluding evidence offered to prove that the accused had been a resident of the state of Illinois for more than three years after the dates on which he was charged with having committed crimes in the state of Illinois. As this Court indicated in its opinion, Article IV, § 2 of the Federal Constitution first appeared in the Articles of Confederation of 1781 where it was used to describe and continue in effect the practice of the colonies with respect to the extradition of criminals, citing *Kentucky* v *Denison*, 65 US (24 How) 66; 16 L Ed 717 (1861).

Extradition is not intended as a preliminary inquiry into the merits of criminal prosecution but is merely a summary executive proceeding whereby a criminal may be brought before the appropriate demanding tribunal for trial.

> "The language was not used to express the law of extradition as usually prevailing among independent nations but to provide a summary executive proceeding by the use of which the closely associated States of the Union could promptly aid one another in bringing to trial persons accused of crime by preventing their finding in one State an asylum against the processes of justice of another. *Lascelles* v. *Georgia*, 148 U.S. 537. Such a provision was necessary to prevent the very general requirement of the state constitutions that persons accused of crime shall be tried in the county or district in which the crime shall have been committed from becoming a shield for the guilty rather than a defense for the innocent, which it was intended to be. Its design was and is, in effect, to eliminate, for this purpose, the boundaries of States, so that each may reach

> out and bring to speedy trial offenders against its laws from any part of the land.
>
> "Such being the origin and purpose of these provisions of the Constitution and statutes, they have not been construed narrowly and technically by the courts as if they were penal laws, but liberally to effect their important purpose, with the result that one who leaves the demanding State before prosecution is anticipated or begun, or without knowledge on his part that he has violated any law, or who, having committed a crime in one State, returns to his home in another, is nevertheless decided to be a fugitive from justice within their meaning. *Roberts* v. *Reilly*, 116 U.S. 80; *Appleyard* v. *Massachusetts*, 203 U.S. 222; *Kingsbury's Case*, 106 Massachusetts, 223.
>
> "Courts have been free to give this meaning to the Constitution and statutes because in delivering up an accused person to the authorities of a sister State they are not sending him for trial to an alien jurisdiction, with laws which our standards might condemn, but are simply returning him to be tried, still under the protection of the Federal Constitution but in the manner provided by the State against the laws of which it is charged that he has offended." 245 US 132-133.

In *Appleyard* v *Massachusetts*, 203 US 222; 27 S Ct 122; 51 L Ed 161 (1906), the governor of Massachusetts issued a warrant for the arrest of Appleyard who had been indicted in New York for the crime of grand larceny and, after arrest, Appleyard applied for a writ of habeas corpus in the Supreme Judicial Court of Massachusetts. Appleyard pleaded that on the evidence it did not appear that he was a fugitive from justice and that he should be discharged from custody unless it appeared positively by a preponderance of proof that he had consciously fled from justice when he left the state of New York. In disposing of Appleyard's contention this Court opined that the

inquiry is not whether a person consciously fled from justice to avoid prosecution, but whether in fact he is a fugitive from justice. In reaching the holding, the rule was articulated that a person must be delivered up if he is a fugitive because such is the command of the supreme law of the land which may not be disregarded.

> "A person charged by indictment or by affidavit before a magistrate with the commission with a State of a crime covered by its laws, and who, after the date of the commission of such crime leaves the State—no matter for what purpose or with what motive, nor under what belief—becomes, from the time of such leaving, and within the meaning of the Constitution, and the laws of the United States, a fugitive from justice, and if found in another State must be delivered up by the Governor of such State to the State whose laws are alleged to have been violated, on the production of such indictment or affidavit, certified as authentic by the Governor of the State from which the accused departed. Such is the command of the supreme law of the land, which may not be disregarded by any State. The constitutional provision relating to fugitives from justice as the history of its adoption will show, is in the nature of a treaty stipulation entered into for the purpose of securing a prompt and efficient administration of the criminal laws of the several States—an object of the first concern to the people of the entire country, and which each State is bound, in fidelity to the Constitution to recognize. A faithful, vigorous enforcement of that stipulation is vital to the harmony and welfare of the States. And while a State should take care, within the limits of the law, that the rights of its people are protected against illegal action, the judicial authorities of the Union should equally take care that the provisions of the Constitution be not so narrowly interpreted as to enable offenders against the laws of a State to find a permanent asylum in the territory of another State." 206 US 227-228.

Thus *Biddinger* v *Commissioners, supra*, and *Appleyard* v. *Massachusetts, supra*, make it clear that the object of the rendition clause is to insure that states do not become asylums for fugitives and the clause effectively eliminates state boundaries in order to bring offenders to speedy trial. Extradition is not merely a matter of comity but is to be a summary proceeding which will enable the States to promptly aid one another in bringing persons to trial. From these opinions it appears rather clear that the provisions of the Constitution should be interpreted in a manner which safeguards the right of the demanding state, whose laws have been violated, to obtain the arrest and surrender of an accused individual for further proceedings.

In another indictment case, *Roberts* v *Reilly*, 116 US 80; 6 S Ct 291; 29 L Ed 544 (1885), this Court spoke of the duty of a governor of an asylum state to cause the arrest of an alleged fugitive from justice whenever the executive authority of any state demands such fugitive from justice "and produces a copy of an indictment found, or affidavit made, before a magistrate of any state, charging the person demanded with having committed a crime therein, certified as authentic by the governor or chief magistrate from whence the person so charged has fled." 116 US 95.

When a governor issues his warrant of arrest upon a demand made by another state that warrant for arrest must be regarded as sufficient to justify removal until the presumption in favor of the warrant is overcome by contrary proof. *Ex parte Reggel*, 114 US 642; 5 S Ct 1148; 29 L Ed 250 (1885).

In *Roberts* v *Reilly, supra*, the petitioner objected to the sufficiency of the indictment, and this Court found that the indictment was certified by the governor of New York to be authentic and was duly authenticated which is all that was required by the act of Congress.

> "It charges a crime under and against the laws of that

State. It is immaterial that it does not appear that a certified copy of such laws was furnished to the governor of Georgia. The statute does not require it, and the governor could have insisted, and it is to be presumed did insist, upon the production of whatever he deemed necessary or important properly to inform him on the subject. And the courts of the United States, to whose process the relator has appealed, take judicial notice of the laws of all the States." 116 US 96.

VII.

FEDERAL CONSTITUTIONAL AND OTHER RELATED CLAIMS MAY NOT BE CONSIDERED BY AN ASYLUM STATE COURT IN A COLLATERAL PROCEEDINC

In *Pearce* v *Texas*, 155 US 311; 15 S Ct 116; 39 L Ed 164 (1864), George A. Pearce was arrested in the State of Texas upon the requisition of the governor of the State of Alabama. Pearce argued that he was entitled to be discharged and that the indictments were insufficient to authorize his extradition. He alleged that the indictment did not indicate that the offenses were committed in the State of Alabama and in violation of her laws, that the indictments were wholly void in that no time or place was indicated within them, and that it did not appear where the offenses were committed. The indictments were found to be in substantial conformity with the statutes of Alabama and their sufficiency as a matter of technical pleading was not to be inquired into on habeas corpus. *Ex parte Reggel*, 114 US 642; 5 S Ct 1148; 29 L Ed 250 (1885). This Court clearly indicated that the Texas court was correct in leaving constitutional challenges to Alabama law to the courts of Alabama:

> "What the state court did was to leave the question as to whether the statute was in violation of the Constitution of the United States, and the indictments insufficient accordingly, to the demanding State. Its action in that regard simply remitted to the courts of Alabama the duty of protecting the accused in the enjoyment of his constitutional rights, and if any of those rights should be denied him, which is not to be presumed, he could then seek his remedy in this court." 155 US 314.

Pearce stands for the principle that the courts of the asylum State should leave to the demanding State her right to decide challenges to her laws and procedures even if the documents charging a crime may well be insufficient. *Pearce* also clearly indicates that it is not to be presumed that the courts of the demanding State will not protect the constitutional rights of the accused. *Biddinger* v *Commissioner of Police*, 245 US 128; 38 S Ct 41; 62 L Ed 193 (1917).

In *Sweeney* v *Woodall*, 344 US 86; 73 S Ct 139; 97 L Ed 114 (1952), the attempt of a fugitive from Alabama to challenge his confinement was rejected. Woodall had asserted that his past confinement in an Alabama prison had amounted to cruel and unusual punishment and that any future confinement administered by Alabama would similarly violate the rights secured to him by the Constitution. Citing *Dye* v *Johnson*, 338 US 864; 70 S Ct 146; 94 L Ed 530 (1949), and *Ex Parte Hawk*, 321 US 114; 64 S Ct 448; 88 L Ed 572 (1944), this Court considered whether a district court should entertain on the merits a fugitive's application alleging Constitutional deprivations. Emphasis was placed upon the fact that the petitioner had asked a federal court in the asylum state to pass upon the constitutionality of his incarceration in the demanding state although the demanding state was not a party before the federal court and the petitioner had made no attempt to raise the question in the demanding state. Relief was denied because Woodall had made no showing that relief was unavailable to him in the courts of Alabama. The opinion noted that if Woodall had not escaped he would have been required under the provisions of 62 Stat 967 (1948), 28 USC § 2254 and *Ex parte Hawk*, supra,

to exhaust all available remedies in the state courts before making an application to the federal court sitting in Alabama.

> "By resort to a form of 'self help,' respondent has changed his status from that of a prisoner of Alabama to that of a fugitive from Alabama. But this should not affect the authority of the Alabama courts to determine the validity of his imprisonment in Alabama. The scheme of interstate rendition, as set forth in both the Constitution and the statutes which Congress has enacted to implement the Constitution, contemplates the prompt return of a fugitive from justice as soon as the state from which he fled demands him; these provisions do not contemplate an appearance by Alabama in respondent's asylum to defend against the claimed abuses of its prison system. Considerations fundamental to our federal system require that the prisoner test the claimed unconstitutionality of his treatment by Alabama in the courts of that State. Respondent should be required to initiate his suit in the courts of Alabama, where all parties may be heard, where all pertinent testimony will be readily available and where suitable relief, if any is necessary, may be fashioned. (Footnotes omitted). 344 US 89-90.

In concurrence Mr. Justice Frankfurter stated that due regard for the relationship of the States in our federal system and for the relationship of the courts of the United States to those of the States requires that claims, even as serious as those raised by Woodall, first be raised in the courts of the demanding state. Justice Frankfurter also emphasized that there was no suggestion that Woodall would be without opportunity to resort to the courts of Alabama for protection of his constitutional rights.

> "Our federal system presupposes confidence that a demanding State will not exploit the action of an asylum State

> by indulging in outlawed conduct to a returned fugitive from justice." 344 US 91.

VIII.

ANY INDICTMENT MAY NOT BE REVIEWED IN AN ASYLUM STATE IN A HABEAS CORPUS PROCEEDING.

In *Pierce* v *Creecy*, 210 US 387, 402; 28 S Ct 714; 52 L Ed 1113 (1908), the fugitive alleged that a Texas indictment returned against him did not adequately charge him with a crime. He disclaimed the purpose of attacking the indictment as a criminal pleading but attempted to show that the indictment did not charge a crime. This Court was unable to adopt his view "that an objection, good if taken on arrest of judgment, would be sufficient to show that the indictment is not a charge of crime." Such a test would be uncertain especially in view of the varying practices in the different states, and such a test would be entirely inapplicable to the case of a charge of crime by affidavit which is permitted by the Constitution. 210 US 402. Relying on *In re Strauss*, 197 US 324; 25 S Ct 535; 49 L Ed 774 (1905), Mr Justice Moody wrote:

> "The only safe rule is to abandon entirely the standard to which the indictment must conform, judged as a criminal pleading, and consider only whether it shows satisfactorily that the fugitive has been in fact, however inartificially, charged with crime in the States from which he has fled. *Roberts* v *Reilly*, 116 US 80, 95; 29 L Ed 544, 549, 6 Sup St Rep 291; *Pearce* v *Texas*, 155 US 311, 313; 39 L Ed 164, 167 15 S Ct Rep 116, *Hyatt* v *New York*, 198 US 691, 709; 47 L Ed 657, 660, 23 S Ct Rep 456; *Munsey* v *Clough*, 196 US 364, 372; 49 L Ed 515, 516, 25 Ct Rep 282 (*Davis's Case*, 122 Mass 324; State ex rel O'Malley v O'Connor, 38 Minn 243, 36 NW 462;) State ex rel Smith v Goss, 66 Minn 291, 68 NW 1089, re Voor-

hees 32 N.J.L. 141; Ex parte Pearce, 32 Tex. Crim. Rep. 301, 23 SW 15; Re Van Sciever, 42 Neb 772, 47 Am. St. Rep. 730, 60 NW 1037; State ex rel Munsey v Clough, 71 N.H. 594, 53 ATL 1086." 52 L Ed 1120-1121.

In response to Pierce's attacks upon the indictment the Court admitted that if his objections were well founded they would demonstrate that the indictment was bad. However, the Constitution does not require as an indispensable prerequisite to interstate extradition that there be a good indictment or even an indictment of any kind. "It requires nothing more than a charge of crime." 210 US 403. While accepting the argument that it is entirely possible that the indictment is invalid, it is clearly stated that the Constitution neither requires nor permits review of a sister State's indictment in a habeas corpus proceeding.

"This court, in the cases already cited, has said, somewhat vaguely, but with as much precision as the subject admits, that the indictment, in order to constitute a sufficient charge of crime to warrant interstate extradition, need show no more than that the accused was substantially charge with crime. This indictment meets and surpasses that standard, and is enough. If more were required it would impose upon courts, in the trial of writs of habeas corpus, the duty of a critical examination of the laws of states with whose jurisprudence and criminal procedure they can have only a general acquaintance. Such a duty would be an intolerable burden, certain to lead to errors in decision, irritable to the just pride of the states, and fruitful of miscarriages of justice. The duty ought not to be assumed unless it is plainly required by the Constitution; and in our opinion, there is nothing in the letter or the spirit of that instrument which requires or permits its performance." 210 U.S. 404-405.

IX.

A PARTY IS CHARGED WITH A CRIME WHEN AN AFFIDAVIT IS FILED ALLEGING THE COMMISSION OF AN OFFENSE AND A WARRANT IS ISSUED FOR HIS ARREST.

In the Matter of Strauss, 197 US 324; 25 S Ct 535; 49 L Ed 774 (1905), was a case wherein the petitioner was charged by affidavit before a justice of the peace in Ohio with the crime of obtaining $400 worth of jewelry by false pretenses contrary to law of the State of Ohio. He was arrested as a fugitive from justice and taken before a magistrate of the City of New York. The governor of New York issued his warrant directing the police commissioner of New York City to arrest the accused and deliver him to the agent of Ohio. The governor's warrant recited that the requisition was accompanied by an affidavit certified by the governor of Ohio charging the accused with having committed the crime. It was contended that the statute allowing delivery of the fugitive based upon an affidavit and a charge pending before a justice of the peace without jurisdiction to try the case violated the Fourth Amendment of the Constitution. In denying relief Mr. Justice Brewer stated:

"It is contended that the constitutional provision for the extradition of persons 'charged with treason, felony or other crime' requires that the charge must be pending in a court that can try the defendant, and does not include one before a committing magistrate, who can only discharge or hold for trial before another tribunal.

"But why should the word 'charged' be given a restrictive interpretation? It is found in the Constitution, and ordinarily words in such an instrument do not receive a narrow, contracted meaning, but are presumed to have been used in a broad sense, with a view of covering all

contingencies. In *McCulloch* v. *Maryland*, 4 Wheat. 316, one question discussed was as to the meaning of the word 'necessary' as found in the clause of the Constitution giving to Congress power 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.' Chief Justice Marshall, speaking for the court, said (p. 415):

" 'This word, then, like others, is used in various senses; and, in its construction, the subject, the context, the intention of the person using them, are all to be taken into view.

" 'Let this be done in the case under consideration. The subject is the execution of those great powers on which the welfare of a nation essentially depends. It must have been the intention of those who gave these powers, to insure, as far as human prudence could insure, their beneficial execution . . . .'

Under the Constitution each State was left with full control over its criminal procedure. No one could have anticipated what changes any State might make therein, and doubtless the word 'charged' was used in not as its broad significance to cover any proceeding which a State might see fit to adopt by which a formal accusation was made against an alleged criminal. In the strictest sense of the term a party is charged with crime when an affidavit is filed, alleging the commission of the offense and a warrant is issued for his arrest, and this is true whether a final trial may or may not be had upon such charge. It may be, and is true, that in many of the States some further proceeding is, in the higher grade of offenses at least, necessary before the party can be put upon trial, and that the

proceedings before an examining magistrate are preliminary, and only with a view to the arrest and detention of the alleged criminal but extradition is a mere proceeding in securing arrest and detention. An extradited defendant is not put on trial upon any writ which is issued for the purposes of extradition, any more than he is upon the warrant which is issued by the justice of the peace directing his arrest." 197 U.S. 330-331.

In *Strauss* the argument was made that sometimes people are wrongly extradited, as in the case of a false affidavit, and Mr. Justice Brewer quoted *Virginia* v *Paul*, 148 U.S. 107, 119:

"Proceedings before a magistrate to commit a person to jail, or to hold him to bail, in order to secure his appearance to answer for a crime or offense, which the magistrate has no jurisdiction himself to try, before the court in which he may be prosecuted and tried, are but preliminary to the prosecution, and are no more a commencement of the prosecution than is an arrest by an officer without a warrant for a felony committed in his presence."

"But such decisions, instead of making against the use in this constitutional section of the word 'charged' in its broad sense, make in its favor, because, as we have noticed, an extradition is simply one step in securing the arrest and detention of the defendant. And these preliminary proceedings are not completed until the party is brought before the court in which the trial may be had." 197 U.S. 332.

Justice Brewer in *Strauss* disposed of the argument that one may falsely swear in an affidavit by indicating that a prosecuting attorney may also wantonly or ignorantly file an information charging a similar offense:

"But who would doubt that an information, where that is the statutory pleading for purposes of trial, is sufficient to justify an extradition? Such possibilities as these cannot be guarded against. While courts will always endeavor to see that no such attempted wrong is successful, on the other hand care must be taken that the process of extradition be not so burdened as to make it practically valueless. It is but one step in securing the presence of the defendant in the court in which he may be tried, and in no manner determines the question of guilt." 197 U.S. 332-333.

In *Compton* v *State of Alabama*, 214 US 1, 29 S Ct 605; 53 L Ed 885 (1909), Mr. Justice Harlan wrote that a notary public could be deemed a magistrate in Georgia for purposes of a statute which required that a factual affidavit must be sworn to before a 'magistrate' of the state charging the fugitive with the commission of a crime in the state making the demand. In *Compton* the only charge against the fugitive was an affidavit which formed the basis of the official notification of the Georgia governor that Compton had been charged and had fled. In denying relief to the petitioner it was found material to consider whether the affidavit made in the case and certified as authentic by the governor of Georgia was sufficient to authorize the governor of Alabama to issue a warrant. In determining that a notary public was a magistrate, this Court relied upon the law of the demanding state, Georgia, and assumed that when the governor of Alabama issued his warrant of arrest he had also assumed that the notary public was a magistrate under the law of Georgia.

"When it appears, as it does here, that the affidavit in question was regarded by the executive authority of the respective States concerned as a sufficient basis, in law, for their acting,—the one in making a requisition, the other in issuing a warrant for the arrest of the alleged

fugitive—the judiciary should not interfere, on *habeas corpus*, and discharge the accused, upon technical grounds, and unless it be clear that what was done was in plain contravention of law." 214 U.S. 8.

Several decisions of lower federal and state courts have held that the asylum state, consistent with the extradition clause, may not look behind the demanding state's documents in order to consider federal constitutional claims raised by the fugitive. *Wise* v *State*, 197 Neb 831; 251 NW2d 373, 376 (1977) (Speedy trial); *In re Otis Golden*, 65 Cal App 3rd 789; 135 Cal Rptr 512 (1977), appeal dismissed and *cert den*, sub nom, *Golden* v *California*, ... US .....; 98 S Ct 35; 54 L Ed 2d 63 (1977) (probable cause to arrest); *Price* v *Pitchess*, 556 F2d 926, 928 (CA 9, 1977), *cert den*, ... US .....; 98 S Ct 504; 54 L Ed 2d 451 (1977). (Double jeopardy, speedy trial). See also *DeGenna* v *Grasso*, 413 F Supp 427, 431-432 (D Conn, 1976) affirmed, 426 US 913; 96 S Ct 2617; 49 L Ed 2d 368 (1976).

Several state courts have held that the proper forum for determining probable cause or the sufficiency of an affidavit is the demanding state. See *Smith* v. *Stynchcombe*, 234 Ga 780, 218 SE2d 63 (1975); *Smith* v. *State*, 89 Idaho 70, 403 P2d 221 (1965); *People* v. *Lauderdale*, 16 Ill App 3rd 916, 306 NE2d 913 (1974); *People* v. *Woods*, 52 Ill App 2d 48; 284 NE2d 286 (1972); *Bailey* v. *Cox*, 260 Ind 448; 296 NE2d 422 (1973); *McEwen* v. *State, Miss*, 224 So2d, 206 (1969); *In re Ierardi*, 366 Mass 640; 321 NE2d 921 (1975); *Salvail* v. *Sharkey*, 108 R.I. 63; 271 A2d 814 (1970); *Wellington* v. *State*, S.D., 238 NW2d 499 (1976); *State* v. *Hughes*, 68 Wis 2d 662; 229 NW2d 655 (1975); *Marshall* v. *Gidney*, 23 Crim Law Rptr 2117; ..... Pa .....; ..... A2d ..... (1978); *Ault* v *Purcell*, 16 Or App 664; 519 P2d 1285 (1974), *cert den* 419 US 858; 95 S Ct 106; 42 L Ed 2d 92 (1974). Unlike the Michigan decision in the present case these courts have consistently stated that extradition is a summary procedure which is but one step in securing

arrest and detention. *Biddinger* v *Commissioner*, 245 US 128 (1917).

> A court in the asylum state—be it state or federal—conducts a very limited inquiry on applications for habeas corpus in extradition proceedings. *United States ex rel. Tucker* v. *Donovan*, 321 F.2d 114, 116 (2d Cir. 1963), *cert. denied sub nom. Tucker* v. *Kross*, 375 U.S. 977, 84 S.Ct. 496, 11 L.Ed.2d 421 (1964). Specifically,
>
> > "[t]he courts of the asylum state are limited to deciding whether (1) a crime has been charged in the demanding state; (2) the fugitive in custody is the person so charged; and (3) the fugitive was in the demanding state at the time the alleged crime was committed." *Woods* v. *Cronvich*, 396 F.2d 142, 143 (5th Cir. 1968). *Price* v *Pitchess*, 556 F2d 926, 928 (1977).

In refusing to require a pre-rendition probable cause finding California acknowledged that extradition is designed to enable states to aid one another and that the Extradition Clause is in the nature of a treaty stipulation. *Appleyard* v *Massachusetts*, 203 US 222, 227 (1906).

> Under this constitutional provision, extradition is not a matter of mere comity, but an absolute right of the demanding state and duty of the asylum state (*In re Russell, supra*, 12 Cal.3d at p. 234; *In re Morgan* (1966) 244 Cal.App.2d 903, 910 [53 Cal.Rptr. 642]). Thus an asylum state does not refrain from undertaking an examination of a fugitive's guilt merely to avoid procedural delays or complications in the rendition procedure. Rather it does so in recognition of the principle that such an inquiry " 'into the merits of the charge against the prisoner or into the motives which inspired the prosecution in the demanding State . . . exceeds its authority under the constitutional and statutory provisions regulating the extradition of criminals. The man-

> date of the Constitution requires "a person *charged* in any State with a crime" to be delivered by the asylum State to the State whose laws he has violated. That State alone can determine the guilt or innocence of the offending party.' " (Italics ours.) (*In re Kimler, supra*, 37 Cal.2d at p. 572.) The summary nature of the extradition process is not founded upon mere considerations of speed and efficiency in the rendition of fugitives. It is based upon the federal Constitution and implementing statutes which recognize extradition as something more than a matter of mere comity between cooperating states. (*Appleyard* v. *Massachusetts, supra*, 203 U.S. at pp. 227-228 [51 L.Ed. at p. 163]; *In re Russell, supra*, 12 Cal.3d at p. 234; *In re Morgan, supra*, 244 Cal.App.2d at p. 910.)"

In re Otis Golden, 65 Cal App 3rd 789, 795-796; 135 Cal Rptr 512 (1977), appeal dismissed and *cert den*, sub nom, *Golden* v *California*, ... US .....; 98 S Ct 35; 54 L Ed 2d 63 (1977).

The law relative to extradition recognizes that the asylum state may not inquire into the merits of the demanding state's charge against a fugitive. The focus of the inquiry by the asylum state should be upon the fugitive status of the accused. This inquiry will adequately protect the accused because the asylum state will be able to require proof that the accused is a fugitive from the demanding state and is charged with a crime pursuant to the dictates of *In the Matter of Strauss*, 197 US 324; 25 S Ct 535; 49 L Ed 774 (1905).

Leaving the probable cause inquiry to the courts of the demanding state will achieve an accommodation between the duty imposed by the Extradition Clause and the protection required by the Fourth Amendment. It places the determination in the forum best suited to determine the merits of the matter.

Adoption of the *Kirkland* v *Preston* rationale would frustrate the purposes of the Extradition Clause by engendering protracted litigation and inevitably fugitives would attempt to raise other Constitutional challenges which heretofore were not proper subjects for consideration by the courts of an asylum state.

The courts of the demanding state are empowered to protect the rights of an accused, and it is presumed that they will do so.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be reversed.

Respectfully submitted,

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Dated: May 26, 1978

MICHIGAN UNIFORM CRIMINAL EXTRADITION ACT

Act 144, 1937, p 218; eff October 29.

AN ACT relative to and to make uniform the procedure on interstate extradition; to prescribe penalties for the violation of the provisions of this act and to repeal all acts and parts of acts inconsistent with the provisions of this act.

The People of the State of Michigan enact:

§ 28.1285(1) **Definitions.** Section 1. Where appearing in this act, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state. The term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.
(CL '48, § 780.1.)

§ 28.1285(2) **Fugitives from other states; duty of governor, arrest, delivery.** Sec. 2. Subject to the provisions of this act, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.
(CL '48, § 780.2.)

§ 28.1285(3) **Form of demand.** Sec. 3. No demand for extradition of a person charged with a crime in another state shall be recognized by the governor unless in writing, accompanied by the following papers:

EXHIBIT A

(1) Governor's requisition under the seal of the state;

(2) Prosecutor's application for requisition for the return of a person charged with crime, wherein shall be stated:

(a) The name of the person so charged;

(b) The nature of the crime;

(c) The approximate time, place and circumstances of its commission;

(d) That the accused was present in demanding state at the time of commission of alleged crime;

(e) That he thereafter fled from the state;

(f) The state in which he is believed to be, including the location of the accused therein, at the time the application is made; certifying that, in the opinion of the said prosecuting attorney, the ends of justice require the arrest and return of the accused to the demanding state for trial, and that the proceeding is not instituted to enforce a private claim;

(3) Verification by affidavit of said application, which shall be accompanied by certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, and the warrant issued thereupon, stating the offense with which the accused is charged, or of the judgment of conviction or of a sentence imposed in execution thereof, together with a statement by executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. Affidavits or documents as the prosecutor may deem proper may be submitted with such application;

(4) Executive warrant, under the seal of the state, authorizing agent, therein named, to receive the person demanded;

(5) The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment or conviction or sentence must be authenticated by the executive authority making the demand.

(CL '48, § 780.3.)

§ 28.1285(3½) Extradition of person not in demanding state when crime was committed. Sec. 3a. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom, and the requirements contained in subdivisions (d) and (e) of section 3 of this act shall not apply to such cases ◆.

(CL '48, § 780.3a.)

§ 28.1285(4) Investigation by governor. Sec. 4. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

(CL '48, § 780.4.)

§ 28.1285(5) Extradition and rendition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion. Sec. 5. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section twenty-two [22] of this act with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

(CL '48, § 780.5.)

§ 28.1295(6) Governor's warrant; recitals. Sec. 6. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

(CL '48, § 780.6.)

§ 28.1285(7) Same; manner and place of execution. Sec. 7. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this act to the duly authorized agent of the demanding state.

(CL '48, § 780.7.)

§ 28.1285(8) Authority of arresting officer. Sec. 8. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

(CL '48, § 780.8.)

§ 28.1285(9) Rights of accused persons; application for writ of habeas corpus. Sec. 9. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

(CL '48, § 780.9.)

§ 28.1285(10) Same; violations by officers, penalty. Sec. 10. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in wilful disobedience to the last section, shall be guilty of a misdemeanor and, on conviction, shall be fined, not more than one thousand [1,000] dollars or be imprisoned not

more than six [6] months, or both.

(CL '48, § 780.10.)

§ 28.1285(11) Same; confinement in local jail, expense; fugitives being transported through state, confinement; new requisition. Sec. 11. The offiicer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: Provided, however, That such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

(CL '48, § 780.11.)

§ 28.1285(12) Fugitives from other states; arrest prior to requisition; warrant, contents. Sec. 12. Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and except in cases arising under section 3a, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 3a, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

(CL '48, § 780.12.)

§ 28.1285(13) Same; felons, arrest without a warrant, procedure. Sec. 13. The arrest of a person may be lawfully made also by any peace officer without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one (1) year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if

he had been arrested on a warrant.

(CL '48, § 780.13.)

§ 28.1285(14) Same; commitment to await requisition; bail. Sec. 14. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, and, except in cases arising under section 3a, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

(CL '48, § 780.14.)

§ 28.1285(15) Same, bail; type of cases; condition of bond. Sec. 15. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state.

(CL '48, § 780.15.)

§ 28.1285(16) Same; extension of time of commitment; adjournment. Sec. 16. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty (60) days, or a judge or magistrate judge may again take bail for his appearance and surrender, as provided in section

fifteen (15), but within a period not to exceed sixty (60) days after the date of such new bond.

(CL '48, § 780.16.)

§ 28.1285(17) Same; forfeiture of bail; rearrest order; recovery on bond. Sec. 17. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

(CL '48, § 780.17.)

§ 28.1285(18) Persons under criminal prosecution in this state at time of requisition; discretion of governor. Sec. 18. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

(CL '48, § 780.18.)

§ 28.1285(19) Guilt or innocence of accused, when inquired into. Sec. 19. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

(CL '48, § 780.19.)

§ 28.1285(20) **Governor may recall warrant or issue alias.** Sec. 20. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

(CL '48, § 780.20.)

§ 28.1285(21) **Fugitives from this state; warrant of governor; form.** Sec. 21. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

(CL '48, § 780.21.)

§ 28.1285(22) **Same; application for issuance of requisition; execution by officer; form and contents, disposition.** Sec. 22. 1. When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

2. When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation

or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is belived to be, including the location of the person therein at the time application is made.

3. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he or they shall deem proper to be submitted with such application. One (1) copy of the application, with the action of the governor indicated by endorsement thereon, and one (1) of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

(CL '48, § 780.22.)

§ 28.1285(23) **Same; costs and expenses. Sec. 23.** In all extradition cases the expenses therefor shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, and all other necessary and reasonable expenses in returning such prisoner.

(CL '48, § 780.23.)

§ 28.1285(24) Same; immunity from service of process in certain civil actions. Sec. 24. A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

(CL '48, §780.24.)

§ 28.1285(25) Written waiver of extradition proceedings. Sec. 25. Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections six [6] and seven [7] and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state: Provided, however, That before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section nine [9].

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent.

(CL '48, § 780.25.)

§ 28.1285(26) Non-waiver by this state. Sec. 26. Nothing

in this act contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this act which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

(CL '48, § 780.26.)

§ 28.1285(27) Person extradited not immune from other criminal prosecution. Sec. 27. After a person has been brought back to this state by, or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

(CL '48, § 780.27.)

§ 28.1285(28) Interpretation. Sec. 28. The provisions of this act shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

(CL '48, § 780.28.)

§§ 28.1285(29), 28.1285(30) (Repealed by Pub Acts 1945, No. 267, imd eff May 25. These sections contained a severing clause and a repeal provision.)

§ 28.1285(31) Short title. Sec. 31. This act may be cited as the "uniform criminal extradition act".

(CL '48, § 780.31.)

ARIZONA UNIFORM CRIMINAL EXTRADITION ACT

§ 13—1301. Definitions

In this article, unless the context otherwise requires:

1. "Governor" includes any person performing the functions of governor by authority of the law of this state.

2. "Executive authority" includes the governor, and any person performing the functions of governor in a state other than this state.

3. "State," when referring to a state other than this state, means any other state or territory, organized or unorganized, of the United States.

§ 13—1302. Fugitives from justice; duty of governor

Subject to the provisions of this article, the provisions of the constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

§ 13—1303. Form of demand

A. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing and accompanied by a copy of an indictment found or by an information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there.

B. The indictment, information, or affidavit made before

the magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth.

§ 13—1304. Governor may investigate case

When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

§ 13—1305. What papers must show

A warrant of extradition shall not be issued unless the documents presented by the executive authority making the demand show that:

1. Except in cases arising under § 13—1306, the accused was present in the demanding state at the time of the commission of the alleged crime, and thereafter fled from the state;

2. The accused is now in this state, and

3. Is lawfully charged by indictment found or by information filed by a prosecuting officer and supported by affidavit to the facts, or by affidavit made before a magistrate in that state, with having committed a crime under the laws of that state, or that he has been convicted of a crime in that state and has escaped from confinement or broken his parole.

§ 13—1306. Extradition of persons not present in demanding state at time of commission of crime

The governor of this state may also surrender, on demand

of the executive authority of any other state, any person in this state charged in such other state in the manner provided in § 13—1305 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this article not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

§ 13—1307. Issue of governor's warrant of arrest; its recital

If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

§ 13—1308. Manner and place of execution

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this article, to the duly authorized agent of the demanding state.

§ 13—1309. Authority of arresting officer

Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

§ 13—1310. Duty of arresting officer; application for writ of habeas corpus; notice

A. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he has been informed of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand legal counsel; and if the prisoner, his friends, or counsel shall state that he or they desire to test the legality of his arrest, the prisoner shall be taken forthwith before a judge of a court of record, who shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the public prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

§ 13—1311. Penalty for noncompliance with preceding section

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant in disobedience to § 13—1310, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than one thousand dollars, imprisoned not more than six months, or both.

§ 13—1312. Confinement in jail when necessary

The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

§ 13—1313. Arrest prior to requisition

When any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and, except in cases arising under § 13—1306, with having fled from justice, or whenever complaint shall have been made before any judge or magistrate of this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under § 13—1306, has fled therefrom and is believed to be in this state, the judge or magistrate shall issue a warrant directed to the sheriff of the county in which the oath or complaint is filed directing him to apprehend the person charged, wherever he may be found in this state, and bring him before the same or any other judge, magistrate, or court who or which may be convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

§ 13—1314. Arrest without a warrant

The arrest of a person may be lawfully made also by any peace officer or a private citizen without a warrant upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in § 13—1313, and thereafter his answer shall be heard as if he had been arrested on a warrant.

§ 13—1315. Commitment to await requisition; bail

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and that he probably committed the crime, and, except in cases arising under § 13—1306, that he has fled from justice, the judge or magistrate must commit him to jail by a warrant reciting the accusation for such a time specified in the warrant, not exceeding fifteen days, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in § 13—1316, or until he shall be legally discharged.

§ 13—1316. Bail; in what cases; conditions of bond

Unless the offense with which the prisoner is charged is shown to be a capital offense, where the proof is evident or the presumption great, under the laws of the state in which it was committed, a judge or magistrate in this state must admit the person arrested to bail or bond or undertaking, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond or undertaking, and for his surrender, to be arrested upon the warrant of the governor.

§ 13—1317. If no arrest made on governor's warrant before the time specified

If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, the judge or magistrate may discharge him or may recommit him to a further day, or may again take bail for his appearance and surrender as provided in § 13—1306; and at the expiration of the second period of commitment, or if he has been bailed and appeared according to the terms of his bond or undertaking, the judge or magistrate may either discharge

him, or may require him to enter into a new bond or undertaking, to appear and surrender himself at another day.

§ 13—1318. Forfeiture of bail

If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the court, by proper order, shall declare the bond forfeited; and recovery may be had thereon in the name of the state as in the case of other bonds or undertaking given by the accused in criminal proceedings within this state.

§ 13—1319. Persons under criminal prosecution in this state at time of requisition

If a criminal prosecution has been instituted against such person under the laws of this state and is still pending the governor, at his discretion, either may surrender him on demand of the executive authority of another state or may hold him until he has been tried and discharged or convicted and punished in this state.

§ 13—1320. Guilt or innocence of accused; when inquired into

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as provided by this article shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

§ 13—1321. Governor may recall warrant or issue alias

The governor may recall his warrant of arrest, or may issue another warrant whenever he deems proper.

§ 13—1322. Fugitives from this state; duty of governors

Whenever the governor of this state shall demand a person charged with crime in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

§ 13—1323. Application for issuance of requisition; by whom made; contents

When the return to this state of a person charged with crime in this state is required, the county attorney of the county in which the offense is committed shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, and the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the county attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged. The county attorney may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, shall be filed in the office of the secretary of state to remain of record in that

office. The other copies of all papers shall be forwarded with the governor's requisition.

§ 13—1324. Payment of account of agent; method as exclusive; penalty for violation by agent or person

A. When the governor of this state, in the exercise of the authority conferred by law, demands from the executive authority of any other state or foreign country the surrender to the authorities of this state of a fugitive from justice, the accounts of the persons employed by him for that purpose shall be paid by the county in which the offense was committed upon presentation of the account to the board of supervisors. Should the board of supervisors neglect to pay the claim within thirty days after its presentation, the superior court may, upon petition filed in such court, order the payment of the claim.

B. No compensation, fee or reward shall be paid to or received by a public officer of this state, or other person, for a service rendered in procuring from the governor the demand, the surrender of the fugitive, conveying the fugitive to this state, or detaining him therein, except as provided in this section, and any person receiving or accepting such compensation, fee or reward in violation of the provisions of this section is guilty of a misdemeanor.

§ 13—1325. Exemption from civil process

A person brought into this state on extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had ample opportunity to return to the state from which he was extradited.

§ 13—1326. No right of asylum

After a person has been brought back to this state upon

extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

§ 13—1327. Interpretation

The provisions of this article shall be so interpeted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 13—1328. Short title

This article may be cited as the uniform criminal extradition act.